IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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JUDGMENT

Rajmata Krishna Kumari
vs
The State of Rajasthan & Ors.

D.B. CIVIL SPECIAL APPEAL NO.404/1994 AGAINST THE ORDER DATED 27.7.1994 IN S.B. CIVIL WRIT PETITION NO.5789/1992

DATE OF ORDER :: 11th October, 2006

PRESENT

REPORTABLE

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Rajendra Mehta, Advocate, for the appellant.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: (Per Hon'ble Justice Shri Mohammad Rafiq)

Monarchy ended, titles derecognized and privy purses abolished, but the imprints of royalty still survive in the covenants entered into between the Rulers of the Princely States and the Government of the Dominion of India before "WE THE PEOPLE OF INDIA" gave unto ourselves, the Constitution of India.

Present one is an appeal at the instance of Rajmata Krishna Kumari, widow of His Late Highness Maharaja Shri Hanwant Singhji of Jodhpur challenging the judgment dated

27.7.1994 passed by learned Single Judge of this Court whereby her writ petition was dismissed.

In the writ petition, the appellant prayed for quashment of the order of the Government dated 30th Nov., 1991 and that of the Executive Engineer dated 1st Oct., 1992, by both of which, the respondents declined to continue free water supply for irrigation purposes to 'Sadari Garden' situated at Sadari to the appellant till outstanding dues towards irrigation charges were paid and also for quashing the demand notice dated 30th Oct., 1992 calling upon the appellant to pay outstanding amount and upon failure to do so threatening attachment of the 'Sadari Garden'.

The case as originally set up by the appellant in memorandum of writ petition is that at the time of merger of former State of Jodhpur with the Government of the Dominion of India, a list of private properties of Late His Highness Maharaja Shri Hanwant Singhji was settled by the Government and was conveyed by a collateral letter dated 24th March, 1949, which in the writ petition has been referred to as the 'List of private properties' and/or 'Inventory'. According to the appellant, this Inventory included 'Sadari Garden' and in the note appended thereto, provided for maintenance of the existing arrangement in

regard to free supply of water to the said garden. Photocopy of the relevant extract of the Inventory pertaining to 'Sadari Garden' has been placed on record. According to the appellant, similar arrangement was made in the Inventory in respect of 'Balsamand Garden' and Palace situated at Jodhpur. The relevant extract of Inventory pertaining to this property has also been placed on record. It has been stated that Government of Rajasthan vide its decision dated 9th July, 1979 confirmed that the Ex-Ruler was entitled to free supply of water for 'Balsamand Garden'. Copy of extract of the proceedings of a meeting chaired by Chief Secretary of the State of Rajasthan dated 9th July, 1979 has also been placed on record to substantiate this assertion.

It has been stated that 'Sadari Tank' and 'Sadari Garden' were established by His Late Highness Maharaja Shri Takhat Singhji Sahib, the Ruler of the Erstwhile State of Jodhpur about 125 years ago and 'Sadari Garden' is comprised of Khasra Nos. 4670, 4664, 4667, 4672, 5690, 5692, 5694, 5695, 5696, 5699, 4665, 4668, 4669, 4671, 4673, 5678, 5679, 5691, 5693, 5697 and 5700 aggregating to 26.34 hectare (i.e., 171 Bighas 17 Biswas, Nahri/Barani land and 3.47 hectares are Chahi land and the rest is Gair-Mumkin land). It is bounded by a *Pakka* boundary wall. The property of 'Sadari Garden' was received by

the appellant from her late husband Maharaja Shri Hanwant Singhji in "*Haath Kharcha*" and since then she has been in its cultivatory possession. After the sad demise of the appellant's late husband Maharaja Shri Hanwant Singhji, their only son Maharaja Shri Gaj Singhji was duly recognized as Ruler of the former State of Jodhpur by His Excellency the President of India. 'Sadari Garden' was mutated in the name of the appellant vide order of the Tehsildar, Desuri dated 11.1.1972. This garden has been receiving free supply of water for irrigation of crops and trees sowed and planted therein from the adjacent 'Sadari Tank' even prior to merger of the State of Jodhpur in the year 1949.

It has been stated that pursuant to the entry in the Inventory, referred to above, the State Government has always been making supply of water to 'Sadari Garden' for irrigation purposes free of charge by reserving requisite quantity of water in 'Sadari Tank'. After lapse of 31 years now the Irrigation Department of the State suddenly issued a communication dated 25.7.1989 to the appellant requiring her to pay irrigation charges for supply of water from Vikram Samwat 2016. The appellant responded to the said communication by representation dated 18.10.1989 in which it was pointed out that she was entitled to receive supply of water for irrigation purposes for 'Sadari Tank' free of charge according to the terms

and the stipulation contained in the Inventory/List of private properties. Although, the respondents continued to supply water free of charge, at the same time however they demanded irrigation charges by orders dated 19.2.1991 and 12.12.1991. When the appellant represented to the Government, the Asstt. Secretary to the Government in its Department of Irrigation by communication dated 30th Nov., 1991 required the appellant to pay irrigation charges and stated that the matter could be processed further only thereafter. The appellant thereupon submitted representations to the Irrigation Minister on 25.1.1992 and 29.2.1992. The State Government vide its letter dated 7th May, 1992 called for the comments from Superintending Engineer, Irrigation Department, Pali, which he forwarded by his letter dated 20th June, 1992. In his comments, he informed the Government that water was being supplied from 'Sadari Tank' to 'Sadari Garden' from before the year 1949 and since there was a provision in the Covenant for supply of water free of charge to the entire 'Sadari Garden', there was no question of granting fresh permission by the Irrigation Department for supply of water. In view of the comments offered by the Superintending Engineer, the appellant had every reason to believe that the matter with regard to realization of irrigation charges would now be dropped and water supply would be continued further without insisting upon payment of charges.

She was however surprised to receive a letter dated 30th Oct., 1992 from Ziledar, Irrigation Block, Pali, threatening attachment of her property, in case arrears of irrigation charges were not paid. Reference has been made to a meeting of the Water Distribution Committee convened by the Executive Engineer, Irrigation Division, Pali on 23rd Sept., 1992 which was attended by Manager of the appellant on her behalf. He was informed in the meeting that if the payment of outstanding amount of charges was not made, supply of water would be discontinued. The appellant then immediately sent a telegram to the Irrigation Secretary of the Government of Rajasthan demanding withdrawal of the notice and continuation of free supply of irrigation water. The respondents however illegally stopped free supply of water to 'Sadari Garden' with effect from 1st Nov., 1992. It was against the backdrop of these facts the writ petition was filed with the aforementioned prayers.

The respondents contested the writ petition by filing reply thereto. The fact with regard to the note appended in the Inventory regarding maintenance of existing arrangement for free supply of irrigation water to 'Sadari Garden' was not denied. The respondents however asserted that such free supply of water was intended to be only made for horticulture purposes and not for agricultural purposes, whereas the land in question

was being used for agricultural purposes and therefore the appellant was liable to make payment of irrigation charges as per the prescribed rates. It has been contended that Inventory/List of private properties does not entitle appellant to get supply of water free of charge for agricultural purposes. There is no mention in the Inventory about free supply of water to the crops sowed in the 'Sadari Garden'. The appellant has not cleared the outstanding dues of irrigation charges for the period from 1961 to 1985 in spite of demand raised in this behalf respectively on 25.7.1989,19.2.1991 and 12.12.1991.

It has been stated that the Executive Engineer, Irrigation Division, Pali was perfectly justified in requiring the appellant to first deposit arrears of irrigation charges before supply of irrigation water could be continued further by his communication dated 1st Oct., 1982 on the basis of decision taken in Water Distribution Committee. The respondents in the reply have expressed their readiness to resume water supply, if all dues are paid. Reference has been made to *Khasara Girdhawaris* of the years starting from 1961 to 1985, which indicate that crops of barly, wheat, gram, peas, rajka, methi and mustered were sowed during these years. Case of the respondents in sum and substance was that although 'Sadari Garden' was a private property of the appellant but Inventory and List of private

properties does not confer any right on the appellant to claim free supply of irrigation water for agricultural purposes as part of their right to hold 'Sadari Garden'. It was neither any legal right of the appellant nor was it any fundamental right of her and therefore it was prayed that the writ petition be dismissed.

The writ petition was was dismissed on 27.7.1994 by the learned Single Judge on the premise that it raises seriously disputed questions of facts, which cannot be decided in writ jurisdiction and that the petitioner may, if so advised, resort to alternative remedy of a civil suit since the matter relates to construction of a document for which evidence is required.

We have heard Shri Rajendra Mehta, learned counsel for the appellant and Shri Rameshwar Dave, learned Dy. Government Advocate appearing for the State of Rajasthan and perused the record.

Shri Rajendra Mehta, learned counsel for the appellant argued that the dismissal of the writ petition by the learned Single Judge was made on erroneous assumption that the pleadings and the documents placed on record raised seriously disputed questions of facts whereas in fact there was no dispute about the facts and even the respondents did not raise any

dispute with regard to basic facts and therefore, the findings on this aspect were erroneously recorded by the learned Single Judge. According to him, only question which required determination was whether the respondents were entitled to recover any charges for supply of water from the Samwat 2016 onwards and whether they are entitled to discontinue free supply of water to 'Sadari Garden' from 1st Nov., 1992 despite relevant entry of Inventory guaranteeing continuation of existing arrangement regarding free water supply to 'Sadari Garden'. Learned counsel for the appellant argued that in the circumstances particularly when the entries in the Inventory and List of private properties were not disputed, the writ petition was the only effective and adequate remedy and the appellant could not be relegated to the remedy of a civil suit, which was too cumbersome and time taking process.

Learned counsel for the appellant argued that the present writ petition would not be hit by the bar of Article 363 of the Constitution of India because the respondents have not questioned the correctness of the note given below the property of 'Sadari Garden' in the list of private properties and the only question involved was that of interpretation whether free supply of water was assured only for horticulture purposes and further whether the respondents were justified in discontinuing free

supply of water for agricultural purposes.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that the writ petition involved disputed questions of fact, which could not be appropriately gone into by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India and therefore the learned Single Judge was perfectly justified in dismissing the same. He submitted that even according to relevant entry in the list of private properties no obligation was cast on the State to supply free irrigation water for agriculture purposes. He argued that the writ petition would not be maintainable in view of the bar contained in Article 363 of the Constitution of India, according to which, the dispute arising out of any provision of a Covenant and other similar instrument, which was entered into or executed before commencement of the Constitution by any Ruler of an Indian State to which the Government of the Dominion of India was a party. Learned Dy. Government Advocate therefore prayed that the special appeal may be dismissed.

We have given our earnest consideration to rival arguments advanced by learned counsel for the parties and perused the record.

We have carefully perused the list of private properties, which was sent to Late Maharaja Shri Hanwant Singhji with the letter of Shri V.P. Menon, the then Minister of States dated 24th March, 1949. This letter made a reference to the agreement arrived at between the Ministry of States and the Late Maharaja on the question of inclusion of properties in the list of private properties. The list of private properties enclosed therewith includes 'Sardari Garden', but with the remark that "this will not not include 'Sadari Tank', but the existing arrangement with regard to free supply of water to the garden will be maintained." The property in question is described as 'Sadari Garden' and free supply of water is also assured to be made to the 'garden'. The appellant has also placed on record copy of the Schedule-I containing list of immovable properties wherein Balsamand Garden including Palaces and other buildings in it has also been included but Balsamand Tank and the Pipelines supplying water to Jodhpur have been specifically excluded from the list of private properties but free water supply of 'Balsamand Garden' was guaranteed, as far as possible from 'Balsamand Tank'. When a similar issue came up for consideration before the Government with regard to free supply of water to 'Balsamand Garden' it was agreed upon by the parties in a meeting chaired by the Chief Secretary of the State convened on 9th July, 1979 that the Ex-Ruler was entitled to free supply of water as per the

stipulation in the list of private properties and the Chief Engineer, PHED was asked to proceed accordingly. In regard to free supply of water to 'Sadari Tank' however the respondents have contested the claim of the appellant on the premise that according to the terms of Inventory aforesaid, she was entitled to free supply of irrigation water only for horticulture purposes and not for agricultural purposes. According to them, the appellant has been using the supplied water for the purpose of cultivation of crops like wheat, gram, pees, rajka, methi, barly and mustered etc. They have substantiated this assertion on the basis of information received from Tehsildar (Land Records), Desuri in his report dated 25th Nov., 1992, which in turn was based on *Khasra Girdhawaris* of different years containing details of the cultivated crops. It has been contended that 'Sadari Garden' is predominantly and consistently being used for agricultural purposes and therefore the respondents-State was not under an obligation to ensure continued supply of free irrigation water to the appellant.

Reading judgment of the learned Single Judge make it appear that writ petition was dismissed on the premise that the petition raises seriously disputed questions of facts with the observations that the appellant, if so advised, may resort to remedy of civil suit particularly when the evidence would be

required to be led for construction of Covenant and Inventory/list of private properties. In appeal before us, however, a larger question has been raised whether it would be open even for this Court to entertain the claim of the appellant which essentially arises out of a provision contained in a Covenant or list of private properties and/or Inventory appended thereto. This question if answered in negative would by necessary implication deny such jurisdiction even to a civil court with which observation the writ petition has been dismissed by learned Single Judge.

In order to examine whether the controversy raised in this appeal would fall within the purview of Article 363 of the Constitution of India, it would be only appropriate to reproduce the said article for the facility of reference: -

> "**363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.**- (1) Notwithstanding anything in this Constitution but subject to provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or any other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler or an Indian State and to which the Government of the Dominion of India or any predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or

> obligation arising out of any of the provisions of this Constitution relating to such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.
>
> (2) In this Article -
>
> (a) "Indian State" means any territory recognized before the commencement of this Constitution by His Majesty or the Government of Dominion of India as being such a State; and
>
> (b) "Ruler" includes the Prince, Chief or other person recognized before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

Critical analysis of the aforesaid Article would reveal that this has been intended to override all other provisions of the Constitution except Article 143 in regard to all kinds of legal remedies before any Court including Supreme Court, viz. (i) on any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or any other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any predecessor Governments, was a party and which has or has been continued in operation after such commencement, or (ii) on any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to

such treaty, agreement, covenant, engagement, *sanad* or other similar instrument. It would thus be evident that there are two parts of Article 363, first part relates to any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or any other similar instrument which was entered into or executed before 26.1.1950 by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party or has been continued in operation after the said date and second part covers the disputes in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any treaty, agreement, covenant, engagement, *sanad* or **other similar instrument**. Barring the power of the President of India to refer a question of law or fact of public importance to the Supreme Court for its opinion under Article 143, Article 363 imposes an absolute bar on jurisdiction of all courts to adjudicate upon disputes covered by it. Such a bar would essentially therefore apply to not only a writ petition field under Article 226 of the Constitution of India but also to a civil suit that may be filed before the civil court.

We shall now advert to examine whether the nature of controversy raised in the present appeal falls within the purview of dispute referable to Article 363 of the Constitution and if so,

whether it falls in the first part or in the second part as detailed out above.

When one party asserts a claim or right in respect of an issue and another denies and contradicts it, this essentially becomes a subject matter of dispute. Such dispute between the parties may arise on a question of fact or on a question of law or may be mixed question of fact or law both. Adjudication of any such dispute would therefore necessarily require construction of the documents relied upon by the parties and interpretation of not only the stipulations contained therein but also the law relating to the subject. The pleadings of the parties and the arguments in support thereof by their respective counsels, should not detain us longer to hold that parties in this matter are in dispute in regard to stipulation contained in the list of private properties settled between Late Maharaja Shri Hanwant Singhji, the former Ruler of the Jodhpur State and the then Minister of States of the Government of Dominion of India as evidenced from the letter of Shri V.P. Menon, the the Minister of States dated 24th March, 1949, which was addressed to Late Maharaja Shri Hanwant Singhji. It would be apt to reproduce the said letter in extenso:

"My dear Maharaja Sahib,

I encloses a list of the private properties of Your Highness, as agreed to after discussion between the States Ministry, Your Highness, Mr. P.S. Bau, your Dower and Mr. Jai Narain Vyas, Your Pradhan Mantri.

2. Your Highness will observe that you have to send us the plans and areas of immovable properties and numbers in the cases of items of movable properties.

3. As regards the Pustak Prakash, the books and manuscripts, though they belong to Your Highness and are your private property, they will be kept in the library of the Fort and will be open to the public in accordance with rules to be made by you. As regards their maintenance and management, Your Highness shall abide by any action given to Your Highness in this regard by the Director General of Archeology of the Government of India.

4. The same procedure may be followed in regard to the paintings of the Dhokia-Ka-Kothar. A list of both the manuscript and the paintings is available with Your Highness and Your Highness will sent a list to the Government, if necessary. Should Your Highness at any cost in the future wish to dispose of any of these manuscripts or paintings, Your Highness will give the first refusal to the Rajasthan Government and the Government of India.

Yours Sincerely,
sd/-
(V.P.Menon)

Group Captain High Highness Maharajadhiraj
Shri Hanwant Singhji Sahib Bahadur,
Maharaja of Jodhpur.

Accompaniments : - List of private properties."

Also would be of significance the relevant entry mentioned

in the list of private properties,which is reproduced as under: -

> "(c) Sadri Garden.
> **M.B**. This will not include the Sadri Tank, but the existing arrangement in regard to the free supply of water to the garden will be maintained."

Examined in the light of the provisions of Article 363 of the Constitution of India, it would be clear that the aforesaid entry formed part of the list of private properties enclosed with the letter of the then Minister of States of the Government of the Dominion of India. Such list although would not be an agreement or covenant by itself but nonetheless would qualify the requirement of being "**other similar instrument"** which was entered into or executed before the commencement of the Constitution by a Ruler of the State and to which Government of the Dominion of India was a party.

A similar controversy was raised before the Hon'ble Supreme Court in Dr. Karan Singh Vs. State of J&K and Anr. Reported in (2004) 5 SCC 698 in which it was noticed that in response to Government's letter dated 18th May, 1949, Maharaja Hari Singhji of Kashmir in his letter dated 1st June, 1949 addressed to Late Sardar Vallabhbhai Patel, the then Minister of Home Affairs sent a list of his private properties in which there

was no mention of Jewelery of the regalia which was subject matter of dispute in the writ petition before the High Court. The said list of private properties given by Maharaja Hari Singhji was accepted by the Government of India and duly communicated by a letter dated 9th June, 1949 to Maharaja Hari Singhji. In the writ petition before the High Court prayer for a direction to Union of India to decide and adjudicate upon his representation dated 2.12.1983 was made. During pendency of the writ petition, the representation was rejected by the Government of India on 24th Sept., 1984 and review application was also rejected on 9th Oct., 1984. These two orders were also challenged by amending the writ petition. The writ petition was partly allowed and the petitioner was declared rightful owner of 42 items of jewelery and a direction was issued to the State Government to deliver possession thereof. The Government of India was also directed to reconsider the representation of the petitioner after affording him opportunity of hearing. The Division Bench of the High Court however reversed the judgment of Single Judge holding that regard being had to the provisions of Article 363 of the Constitution of India, any claim arising out of such dispute by the Ex-Ruler cannot be granted by a court of law for the purpose of giving relief. It was against this judgment of the Division Bench, the Hon'ble Supreme Court while dismissing the appeal filed by the appellant observed as to attractability of Article 363

in the following terms:-

> "18. Thus, it is evident that any right arising out of or relating to a treaty, covenant, agreement, etc. as mentioned in Article 363, is barred to be determined by any court. The correspondence exchanged between Maharaja Hari Singh and the Government of India would amount to "agreement" within the meaning of Article 363. In case, the conclusion reached is that the same also covers the articles in question, the bar of Article 363 would clearly be attracted. But if this Court comes to the conclusion that these articles are not covered by the said correspondence, Article 363 would be inapplicable. According to the appellant, there is no document whereunder the question as to these articles came to be considered by the Government. According to the Government, the correspondence of 1949 and letter dated 24.12.1952 decides the aspect of private properties. This factual aspect has been considered while examining other questions."

The Constitution Bench of the Hon'ble Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. VS. Union of India reported in (1971) 1 SCC 85 while interpreting Article 363 in para no.327 held as under : -

> "327. But a constitutional provision of the kind of Article 363 transcends this kind of consideration. All that the Court has to see is whether the dispute falls within either limb of the article. If the dispute is so covered the Court is precluded from examining whether the contention of the party asserting a right was genuine or of real substance. Equally the bar will apply where a party denying the right asserted or contesting the claim put forward is guilty of action which on the face of things appears to be arbitrary if there be some scope for raising the plea in denial or

contradiction."

Why Article 363 was introduced in the Constitution of India by the Constituent Assembly has come to be best stated in para 221 of Madhav Rao Jivaji Rao Scindia (SCC Page 191) (supra), which is as under: -

> "But the Constituent Assembly did not want to open up the Pandora's box. Without Article 363, Article 362 would have opened the floodgates of litigation. The Constituent Assembly evidently wanted to avoid that situation. That appears to have been the main reason for enacting Article 363.....Some of the Rulers who had entered into merger agreements were challenging the validity of those agreements, even before the draft of the Constitution was finalised. Some of them were contending that the agreements were taken from them by intimidation; some others were contending that there were blanks in the agreements signed by them and those blanks had been filled in without their knowledge and to their prejudice. The merger process went on hurriedly. The Constitution-makers could not have ignored the possibility of future challenge to the validity of the merger agreements. Naturally they would have been anxious to avoid challenge to various provisions in the Constitution which are directly linked with the merger agreements."

Similar controversy came up before Constitution Bench of the Hon'ble Supreme Court in Colonel His Highness Sawai Tej Singhji Vs. Union of India reported in (1979) 1 SCC 512, under challenge wherein was a Division Bench judgment of this Court (A.I.R. 1969 Raj. P.52). In that case, their Lordships were called upon to examine as to if only part of the covenant/agreement or

even every agreement whether it is primary or one entered into in pursuance to the provisions of a preceding agreement would fall within the ambit of Article 363. In that case also the dispute pertained to an entry in an agreed upon inventory which was also sent to the then Maharaja of Alwar by the then Minister of States with his letter like what has happened in the present case too. On the question of the bar contained in Article 363 of the Constitution, their Lordships held thus:

> "20.Another contention raised by Mr Sharma was that even if the letter dated 14-9-1949 was held to evidence an agreement, it was not his by the provisions of Article 363 of the Constitution inasmuch as it was an agreement resulting from the Rajasthan Covenant which alone, according to him, was the agreement covered by the article. This contention is also without substance. Article 363 of the Constitution bars the jurisdiction of all courts in any disputes arising out of any agreement which was entered into all executed before the commencement of the Constitution by any Ruler of an Indian State to which the Government of India was a party. The operation of the article is not limited to any 'Parent' covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement would fall within the ambit of the article. Thus, the fact that the agreement contained in the letter dated 14-9-1949 had resulted from action taken under the provisions of the Rajasthan Covenant, is no answer to the plea raised on behalf of the respondents that Article 363 of the Constitution is a bar to the maintainability of the two suits, although we may add, that the agreement did not flow directly from the Rajasthan Covenant but was entered into by ignoring and departing from the provisions of clause (2) of Article XII thereof."

Coming now to the facts of the instant case, it immediately becomes clear that the entry with regard to free supply of irrigation water from 'Sadari Tank' to 'Sadari Garden' is certainly a stipulation in the list of private properties pursuant to an agreement between the then EX-Ruler of the Jodhpur State and the Government of the Dominion of India. The question as to entitlement of the appellant for continued supply of free irrigation water to 'Sadari Garden' and the related question whether such water was intended to be supplied for horticulture purpose alone or also for agricultural purposes would clearly fall within second category of disputes enumerated above. Being a dispute in respect of a right accruing or a liability or obligation arising out of an agreement and/or covenant pursuant to which the list of private properties was prepared and settled between Ex-Ruler of the Jodhpur State and the Government of Dominion of India before commencement of the Constitution, aforesaid list of private properties would qualify to be "**other similar instrument"** referred to in Article 363 of the Constitution of India thus attracting the bar as to the maintainability of such dispute before any municipal court.

The kind of dispute raised in the present appeal would thus be out of bounds of jurisdiction of this Court under Article 226 of the Constitution of India and therefore non-justiciable and for

the same reason therefore not entertainable even by a civil court.

We therefore hold that the writ petition filed by the petitioner was not maintainable and was rightly dismissed. While modifying the judgment of the learned Single Judge as indicated above, we dismiss the present appeal with no order as to costs.

(MOHAMMAD RAFIQ),J. **(S.N. JHA), CJ.**

c.p.goyal/-